

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASUA BUIE,

Plaintiff,

v.

GREGORY BACON,

Defendant.

Case No. 18-CV-1824-JPS

ORDER

On November 4, 2019, the Court set a Scheduling Order in this case, which included a deadline that all discovery be completed no later than April 1, 2020. (Docket #20). The Court made clear to Plaintiff “that he must respond to the defendants’ requests for discovery in accordance with the applicable procedural rules” and that Plaintiff’s “[f]ailure to do so may result in dismissal of this action” pursuant to Civil L.R. 41(c). *Id.* at 2. On March 24, 2020, Defendant Gregory Bacon filed a motion requesting that the Court extend the discovery deadline to May 1, 2020. (Docket #23). In that motion, Defendant explained that, unbeknownst to Defendant, Plaintiff changed his address, which complicated Plaintiff’s ability to complete Defendant’s discovery requests. *Id.* at 1–2. Defendant also explained that the national COVID-19 pandemic would prevent Defendant from deposing Plaintiff in person. *Id.* at 2. The Court subsequently granted the motion. (Docket #24).

Notwithstanding this extension, Plaintiff has failed to comply with the updated May 1, 2020 discovery deadline. Defendant explains that in April, on more than one occasion, Defendant’s counsel contacted Plaintiff

seeking Plaintiff's discovery responses and to remind him of an upcoming video deposition scheduled for April 24, 2020. (Docket #26-1 at 2–3). Without explanation or excuse, Plaintiff failed to attend this video conference. *Id.* at 3. Thereafter, Defendant's counsel e-mailed Plaintiff to attempt to reschedule the deposition. *Id.* Because Plaintiff has not responded to Defendant's discovery requests, Defendant has filed a motion to either compel discovery and extend the discovery and dispositive motion deadlines or, in the alternative, to dismiss this case for failure to prosecute. (Docket #25).

The Court finds that dismissal of this case is appropriate. Under Rule 41(b) “[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action” Fed. R. Civ. P. 41(b). Similarly, “[w]henver it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.” Civil L. R. 41(c). It is clear that Plaintiff has no intention of completing Defendant's discovery requests, working with Defendant's counsel to reschedule the deposition that he inexplicably failed to attend, or, at the very least, contacting Defendant's counsel with regard to this case. Notwithstanding the Court's earlier warning, the Plaintiff has deliberately failed to comply with discovery deadlines and prosecute this case. Therefore, the Court will grant Defendant's motion to dismiss this case for failure to prosecute. (Docket #25). Consistent with Rule 41(b), this dismissal operates as an adjudication on the merits and is with prejudice. Fed. R. Civ. P. 41(b).

Defendant also requests that, pursuant to Fed. R. Civ. P. 54, “that the Court assess appropriate costs to Plaintiff in an amount determined by the Court.” (Docket #26 at 6). *See Donelson v. Hardy*, 931 F.3d 565, 570 (7th Cir.

2019) (“Because the district court dismissed the suit with prejudice, the defendants were prevailing parties entitled to costs.”) (citation omitted). Defendant can submit a proposed bill of costs to the Clerk of Court as appropriate.

Lastly, the Court will deny as moot Defendant’s motion, in the alternative, to compel discovery and amend the discovery deadline, (Docket #25).

Accordingly,

IT IS ORDERED that Defendant Gregory Bacon’s motion to dismiss for failure to prosecute, (Docket #25), be and the same is hereby **GRANTED**;

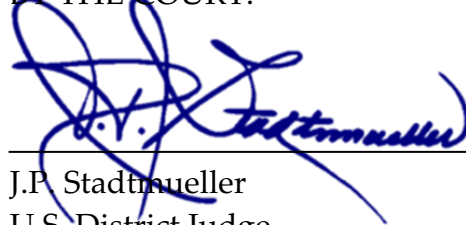
IT IS FURTHER ORDERED that this action be and the same is hereby **DISMISSED with prejudice**, together with costs as taxed by the Clerk of the Court; and

IT IS FURTHER ORDERED that Defendant Gregory Bacon’s alternative motion to compel discovery and amend the discovery deadline, (Docket #25), be and the same is hereby **DENIED as moot**.

The Clerk of the Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 23rd day of June, 2020.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge